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7590	08/13/2004		EXAMINER	
JUDITH A. SZEPESI, BLAKELY SOKILOFF TAYLOR & ZAFMAN LLP. 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025			ZURITA, JAMES H	
			ART UNIT	PAPER NUMBER
			3625	
DATE MAILED: 08/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/814,159	RODRIGUEZ ET AL. <i>MW</i>	
	Examiner	Art Unit	3625
	James H Zurita		

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-50 is/are pending in the application.
 4a) Of the above claim(s) 44-50 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-43 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restriction

Newly submitted claims 44-50 are directed to an invention that is independent and distinct from the invention originally claimed for the following reasons:

Group I – original claims 1-40 and new claims 41-43 are directed to class 705/26, e-shopping.

Group II – new claims 44-50 are drawn to a new invention, found in class 709/219. New claims 44-50 are directed to transferring and tracking blocks of data between a remote file server and a requesting computer.

As a result the claims originally filed would have been restricted accordingly.

Applicant has received actions on the merits for originally presented invention. The invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 44-50 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Amendment

In an amendment filed 14 April 2004, Applicant amended claims 1, 6, 10, 14-17, 19, 20, 22, 27, 32-36, 40 and added claims 41-50.

Response to Arguments

Applicant states that he objects to "...Official Notice and requests the Examiner cite references in support of his position." A "traverse" is a denial of an opposing

party's allegations of fact.¹ The Examiner respectfully submits that applicants' comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' comments as constituting a traverse, applicants' comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

The Examiner also notes that Ginter fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identifying a user, a service provider, amount, time and service ordered) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant concludes that "...the Examiner admits that Ginter does not teach or suggest a [claim limitation] module for ...[various functions]..." In fact, the previous office action stated:

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

Art Unit: 3625

As to the system claimed by applicant, Ginter does not specifically disclose that ***functions are performed by particular modules [as] recited in the claimed invention***, such as

- a module for ...
- a module for ...
- transaction modules for ...
- report generation module [for ...].

However, the ***specific meaning/interpretation of the actions of the one or more modules loaded onto a processor does not patentably distinguish the claimed system***. Further, the recited statement of intended uses, including

- ...uploading of a particular media asset of interest that is uploaded to the network;
- ...processing a request from a user to engage one or more of said service providers to perform one or more services for the particular media asset;
- ...tracking transaction information pertaining to billing of the requested services, including tracking information indicating which service providers performed a service for the particular media asset, including posting credits and/or debits to accounts of the service providers that were engaged; and a
- ...for indicating a provider's billing information in connection with providing services for the various media assets present on the network

does not patentably distinguish the claimed system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide ***any type of modules in the system taught by Ginter*** because the subjective interpretation of the functions performed by particular modules does not patentably distinguish the claimed invention.²

Consistent with MPEP 2106, the Examiner determined that the difference between Ginter and the claimed invention is limited to descriptive material stored on or employed by a machine. The Examiner determined that the descriptive material is nonfunctional descriptive material, as described in MPEP 2106, paragraphs IV.B.1(a) and IV. B.1(b). As noted previously, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. Cf. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

² Office Action of 26 November 2003, emphasis added.

Applicant argues that certain features are not present in Ginter, such as a media gateway (amendment A, page 14). Applicant's attention is respectfully directed to at least Fig. 12, item 734, a gateway, and related description. Please note that Examiner cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 6-25, 27-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., (US 5,892,900).

Ginter discloses methods and systems to track transactions involving media assets over a data network that is serviced by one or more Rights Distributor 106, Fig. 2 (applicant's service providers).

As per claims 1 and 22, Ginter discloses executable code for (a) ***tracking information*** characterizing a particular media asset of interest that is sent to the data network. See, for example, at least Col. 56, lines 1-55. For tracking data

concerning an media assets, please see at least references to audits and audit trails, at least Col. 155, line 3-36. See also at least references to logs, event log **442**, for example, Col. 161, lines 36-51. See also at least references to chain of handling and control, Col. 6, lines 14-26.

(b) **receiving and processing a request** to engage one or more of said service providers to perform one or more services for the particular media asset. See, for example, Col. 77, lines 15-41. See also at least references to end-users customers, Fig. 18 and related text, at least Col. 137, lines 21-50. For other examples of customers using particular media assets, please see at least Col. 278, line 40-Col. 279, line 32. See also at least references to users **11**, in Figs. 2 and 77 and related text.

(c) **tracking transaction information** allowing billing of requested services. See at least Col. 24, lines 24-48, for references to meters to record usage that is later billed.

(d) **tracking transaction information** that may include information indicating which service providers performed a service for the particular media asset. See, for example, at least references to rights distributor identification, partnerships, providing payments to rights distributor. For billing, see at least Col. 10, line 15-Col. 11, line 21.

Ginter **does not** always use the term **module** when referring to executable code.

Ginter **does not** specifically refer to

*[a first unlabelled] module for receiving uploading...as in claim 22
[third through n-th unlabelled] modules for tracking... as in claim 22
[a second unlabelled] module for processing a request, as in claims 22 and 37
report generation module, as in Claims 33, 34, 35, 37, 42
sharing module, as in claim 36*

Ginter's terminology includes *load module*, *objects*, *methods*, *containers*, *smart containers*, etc. These and other units of executable code perform functions claimed by applicant as being performed by *modules* with various labels.

However, the specific label attached to one or more modules loaded onto a processor does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide any type of label to various modules in the system taught by Ginter because the subjective interpretation of the labels connected to various modules does not patentably distinguish the claimed invention.

Ginter **does not** use the term **service provider** to refer to entities that manage the gateway, network and stored media assets. Ginter refers to these entities by various other terms, including rights distributors, sub-distributors, re-distributors, partners. See, for example, at least Col. 294, lines 17-52. These entities receive requests from customers to perform services for particular media assets.

Again, the specific meaning/interpretation of the actions of the one or more entities does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to refer to entities doing business across a network by various names in the system taught by Ginter because the subjective interpretation of the labels connected to various entities does not patentably distinguish the claimed invention.

Ginter **does not** use the term *upload*. To upload is to transmit data from a computer to a network.³ It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and knowledge generally available to one of ordinary skill in the art to disclose uploading data, including particular media asset of interest to a network.

One of ordinary skill in the art at the time the invention was made to would have been motivated to combine Ginter and knowledge generally available to one of ordinary skill in the art to disclose uploading data, including particular media asset of interest to a network for the obvious reason by transmitting data from a user's computer to a network provides an easy, efficient way to made the data available to others who use the network.

As per claims 2 and 23, Ginter discloses that media assets may include selected ones of digital images, audio, video, and text-based media. See, for example, at least Col. 23, lines 1-35.

As per claims 3 and 24, Ginter **does not** use the term *wireless carrier*. Ginter discloses that service providers include a wireless communication, including cellular devices. See, for example, at least Fig. 7, related text and Col. 60, line 56-Col. 62, line 35. The Examiner takes official notice that cellular devices often use wireless carriers to communicate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter with general knowledge to disclose the

³ Definition of *upload*, RANDOM HOUSE WEBSTER'S Computer and Internet Dictionary.

use of wireless carriers for wireless communication. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Ginter with general knowledge to disclose the use of wireless carriers for wireless communication for the obvious reason that wireless communications often take place at least in part via wireless carriers, including wireless data networks and wireless telephone systems.

As per claims 4 and 25, Ginter discloses that service providers may include online e-commerce partner(s) that provide services in conjunction with processing various media asset. See, for example references to business partnerships, agreements, at least Col. 21, line 38-Col. 22, line 36, Col. 31, lines 27-53.

As per claims 6 and 27, Ginter discloses that data network may include connectivity to the Internet. See, for example, at least Col. 18, line 39-Col. 19, line 27, Col. 24, line 49-Col. 25, line 35.

As per claims 7 and 28, Ginter **does not** use the term *Internet Service Provider*. An Internet Service Provider (ISP) is a company that provides access to the Internet.⁴ Ginter discloses that users and customers may access networks and gateways via the Internet. See, for example, at least Col. 18, line 39-Col. 19, line 27, Col. 24, line 49-Col. 25, line 35. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and knowledge generally available to disclose the use of Internet Service Providers. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Ginter and knowledge generally available to disclose the use of Internet

⁴ Definition of *Internet Service Provider*, Id.

Service Providers for the obvious reason that ISPs provide a convenient way to access the Internet and browse the World Wide Web, for example. Users may participate in electronic commerce, by offering and accepting and buying and selling items, including media assets described by Ginter. This may provide stimulus to our economy and may generate increased revenue to merchants.

As per claims 8 and 29, Ginter discloses that

(a) a request may comprise an e-commerce transaction that requires services provided by multiple service providers. See, for example, at least references to multiple parties, Col.. 91 lines 26-67. See also at least references to chains of distributors, Col. 6, lines 15-28. For example, see also at least references to value chain business models, Col. 10, line 32-65.

(b) transaction information may allow billing of requested services for revenue sharing among multiple service providers for servicing an e-commerce transaction. See, for example, references to financial partnerships, at least Col. 312, line 45-Col. 313, line 8.

As per claims 9 and 30, Ginter discloses tracking expense sharing among multiple service providers for servicing the e-commerce transactions. See at least Col. 263, lines 43-62. See also references to lowering costs of distributing content, lowering usage costs, decreased transactions costs Col. 30, line 40-Col. 31, line 5, Col. 230, line 44-55.

As per claims 10-13 and 41-42, concerning Reports and Billing Ginter discloses various types of reports, including reports concerning billing information. See,

for example, at least Col. 14, lines 25-48, Col. 35, line 59-Col. 36, line 40, Col. 43, lines 43-56, Col. 45 lines 30-48, Col. 56 lines 30-46, Col. 58 line 62-Col. 59 line 6, Col. 141 line 34-Col. 142 line 40, Col. 58 line 62-Col. 59 line 6, Col. 175 line 61-Col. 176 line 21, Col. 228 lines 11-25, Col. 230 line 43-54, Col. 329 line 46-Col. 330 line 45.

As per claim 41 and 42, Ginter discloses executable code (applicant's report generation module) for indicating a provider's billing information in connection with providing services for the various media assets present on the data network. For various schemes, see at least , Col. 56 line 30-57, Col. 241 line 34-Col. 242 line 40, Col. 292 line 14-Col. 291 line 10, Col. 329 line 11--Col. 335 line 52.

As per claim 10, Ginter discloses

(a) tracking information uniquely identifying a media asset within the data network. See, for example, references to object ID, at least Figs. 15a, 26 and related text. See also at least Col. 119, line 45-Col. 120, line 43. See also at least references to billing and Object ID, Col. 192, lines 1-64.

(b) tracking information specifying characteristics of the asset. See, for example, at least Col. 22, line 26-Col. 23, line 33, which describes that billing may be done based on characteristics of particular media asset's size, or predefined nature such as images.

(c) tracking information identifying a particular user who uploaded the asset. See, for example, at least references to billing and user ID numbers, Col. 108,line 63-Col. 109, line 18. See also at least Col. 119, line 45-Col. 120, line 43.

As per claims 11 and 33, Ginter discloses that various reports may provide billing information based on characteristics of a particular media asset. See, for example, at least Col. 22 line 26-Col. 23, line 33, which describes that billing may be done based on characteristics of particular media asset's size, or predefined nature such as images. See also at least, Col. 28 line 16-42, Col. 42 line 35-Col. 43 line 20, Col. 114 lines 4-57, Col. 154 line 41-Col. 155 line 2, Col. 166 line 20-Col. 167 line 10, Col. 188 line 39-Col. 189 line 40.

As per claims 12 and 34, Ginter discloses that various reports may provide billing information based on a particular media asset's size. See, for example, at least Col. 23, lines 1-32, which discloses that a user may be billed according to the size of selected media, measured in number of bytes.

As per claims 13 and 35, Ginter discloses that various reports may provide billing information based on a particular media asset's media type. See, for example, at least Col. 43 lines 43-57, Col. 314 lines.62-Col. 315 line 25.

As per claim 14, Ginter discloses that requests may be received from a user other than the user who uploaded the particular media asset to the data network. See, for example, at least references to end-users, teacher customers, and others, Col. 338, lines 29-49. See also at least Figs. 78-87 and related text for examples of users (other than the user who uploaded a particular media asset to the data network) who request media assets.

As per claim 15, Ginter discloses

(a) receiving input indicating that the particular media asset may be shared with other particular users on the data network. See, for example, at least references to rights records, Fig. 22 and related text. See also at least references to user/group rights records, for example, Fig. 21 and related text.

(b) receiving a request from one of the other particular users to engage one or more of said service providers to perform one or more services for the particular media asset. See, for example, Col. 77, lines 15-41. See also at least references to end-user customers, Fig. 18 and related text, at least Col. 137, lines 21-50. For other examples of customers using particular media assets, please see at least Col. 278, line 40-Col. 279, line 32. See also at least references to users **11**, in Figs. 2 and 77 and related text. These rights distributors (applicant's service providers / partners) receive requests from customers to perform services for particular media assets. In that customers may request to download and use information.

(c) tracking transaction information allowing billing of the requested services. See at least Col. 24, lines 24-48, for references to meters to record usage that is later billed. Ginter also discloses tracking transaction information allowing billing of other particular user(s) who requested the services. For example, see at least references to Secure Document Management, at least Col. 299, line 10-Col. 302, line 38.

As per claim 16 and 32, Ginter discloses uniquely identifying the particular media asset, so that it may be distinguished from all other media assets on the data network. Each uploaded content is provided with a unique identifier, See, for example, references to object ID, at least Figs. 15a, 26 and related text. See also at least Col.

119, line 45-Col. 120, line 43. See also at least references to billing and Object ID, Col. 192, lines 1-64.

As per claims 17 and 38, Ginter discloses uniquely identifying a particular device that the particular media asset was received from. For example, see least references to device ID, appliance identification, at Col. 108, line 64-Col. 109, line 11, Col. 234, lines 21-44, Col. 259, line 23-Col. 260, line 31, Col. 344, line 60-Col. 345, line 30.

As per claims 18 and 39, Ginter discloses that transactions that are tracked may comprise e-commerce transactions carried out over the Internet. See, for example, at least references to commercial transactions on the Internet, Col. 18, line 39-Col. 19, line 27, Col. 24, line 49-Col. 25, line 35.

As per claims 19 and 40, Ginter discloses that particular media asset may be uploaded to a data network using wireless communication. See, for example, at least references to wireless, Col. 250, line 55-Col. 251, line 26. see also references to cellular devices, including PDA's, and other portable appliances, at least Col. 255, line 40-Col. 258, line 40.

As per claim 20, Ginter disloses that particular media asset may be uploaded to a data network using wireline communication. See, for example, at least references to transmitting services over telephone lines, at least Col. 1, line 51-Col. 2, line 15.

As per claims 21 and 43, Ginter discloses billing of the requested services and may include information about credits and/or debits posted to accounts of the service providers that were engaged. See, for example, at least Col. 292, line 14-Col. 293, line

10. For clearinghouse and billing, please see at least Col. 36, lines 10-43, Col. 43 lines 43-57, Col. 296 line 57-Col. 297 line 2, Col. 309 line 39-Col. 313 line 8, Col. 314 line 62-Col. 315 line 25, Col. 316 line 53-Col. 317 line 13.

As per claim 31, Ginter discloses a system that tracks information characterizing a type for a particular media asset of interest. See, for example, at least references to content type, Col. 8, line 50-Col. 9 line 2, Col. 26, line 66-Col. 28, line 17, Col. 95, lines 33-65, Col. 267, line 20-Col. 281, line 14, Col. 308, lines 36-62.

As per claim 36, Ginter discloses executable code for receiving input indicating that the particular media asset may be shared with other particular users on the data network. See, for example, at least references to creators inputting usage rights, Col. 294, line 1-Col. 295, line 26, Col. 339, line 28-Col. 342, line 64.

As per claim 37, Ginter discloses executable code that may produce reports that allow billing of services cess a request from a user that the particular media asset is being shared with. For example, see at least references to Secure Document Management, at least Col. 299, line 10-Col. 302, line 38. See also references to collecting audit information that reflects usage by different individuals for payment, at least Col. 32, line 35-Col. 33, line 20, Col. 45, line 63-Col. 46, line 15.

Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., (US 5,892,900) in view of Chui et al (US 6,657,702).

As per claims 5 and 26, Ginter discloses that media assets may include digital images. See, for example, at least Col. 23, lines 1-36.

As per claims 5 and 26, Ginter **does not** specifically disclose that a service provider may provide **photo-finishing** services. Chui discloses that service providers may provide photo-finishing services. See, for example, at least Figs. 3B, 4, related text.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and Chui to disclose that a service provider may provide photo-finishing services. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Ginter and Chui to disclose that a service provider may provide photo-finishing services for the obvious reason that a user may wish to share images with other persons, for example, a family member or a friend. By placing an image at a gateway like Ginter's and making the image available to family members and friends, a user may avoid entering a considerable amount of redundant information and incurring additional expenses.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Motorola, Kahn Unite on Photos, Asian Wall Street Journal, New York, 8 February 2000, 2 pages.

Business Editors, LightSurf Infrastructure to support MultiMedia Messaging Services. Business Wire, 19 March 2001, 2 pages.

Business Editors, ImageScape 2000 Highlights Digital Imaging Explosion in E-Business, Business Wire, 1 March 2000, 3 pages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Zurita
Patent Examiner
Art Unit 3625
5 August 2004



Jeffrey A. Smith
Primary Examiner